

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

**UNITED STATES OF AMERICA,**

NO. CR18-315 RAJ

Plaintiff,

## GOVERNMENT'S RESPONSE TO UNSEALING REQUEST

V.

GIZACHEW WONDIE,

(Filed Under Seal)

**Defendant.**

GIZACHEW WONDIE,  
Defendant. **(Filed Under Seal)**

The government opposes the Defendant's request that this Court unseal the two referenced Orders in their entirety. Dkt Nos. 314 and 321. In the alternative, the government proposes entry of an order unsealing redacted versions of the Orders. This proposal is not offered to frustrate or undermine the public's interest in learning any aspect of this proceeding. Rather, it is offered to protect a compelling public interest: preserving the integrity of an open state homicide investigation.

## A. Relevant Procedural History

Defendant’s counsel initially sought government approval to release the sealed Orders to separate counsel who was presumably retained to represent the Defendant in another proceeding. It subsequently became clear that the initial request would be expanded to include unsealing the Orders in their entirety. In response, the government

1 advised counsel it would seek input from the King County Prosecuting Attorney's Office  
 2 before responding to the request based on concerns that references in the Orders could  
 3 potentially impact the ongoing state homicide investigation. King County Senior Deputy  
 4 Prosecuting Attorney Scott O'Toole subsequently provided the government with redacted  
 5 versions of the two Orders, proposing limited redactions. Copies of the redacted versions  
 6 are attached hereto as Exhibits A (Dkt. No. 314, the *Franks* Order) and B (Dkt. No. 321,  
 7 the probable cause Order).

8       The government forwarded the proposed redacted versions of both Orders to  
 9 Defendant's counsel with the representation that it would not oppose entry of an order  
 10 authorizing the filing of the redacted versions. Counsel advised the government that the  
 11 redactions were unacceptable, and this motion followed.

## 12       B. Legal Standard

13       The First Amendment affords the press and the public a presumed right of access  
 14 to court proceedings and documents. *See generally Press-Enterprise Co. v. Superior*  
*Court*, 464 U.S. 501, 510, 104 S.Ct. 819, 824, 78 L.Ed.2d 629 (1985). Similarly, courts  
 15 recognize that the public has a "common-law" right "to inspect and copy public records  
 16 and documents." *Nixon v. Warner Commc'nns, Inc.*, 435 U.S. 589, 597, 98 S.Ct. 1306, 55  
 17 L.Ed.2d 570 (1978). These presumed rights, however, are not absolute. They can be  
 18 overcome by an overriding right or interest "based on findings that closure is essential to  
 19 preserve higher values and is narrowly tailored to serve that interest." *Press Enterprise*, at  
 20 510; *Nixon*, at 598. More importantly, for purposes of the Defendant's pending request to  
 21 unseal the Orders in their entirety, the general presumption in favor of open judicial  
 22 proceedings requires that the district court consider alternatives to closure, such as  
 23 redaction. *United States v. Index Newspapers LLC*, 766 F.3d 1072, 1097 (9th Cir. 2014).

## 24       C. Argument

25       The Defendant's argument rests almost entirely on repeated references to the need  
 26 for transparency in judicial proceedings. As applied to this proceeding, however, he fails  
 27  
 28

1 to articulate how redacting specific limited factual references to certain aspects of the  
 2 open state homicide investigation obscures the public's ability to understand and discern  
 3 this Court's analysis of the federal prosecution. The Defendant engaged in a robust  
 4 motions practice to secure dismissal of the charged drug and firearm offenses. He  
 5 succeeded. His objective was realized. The outstanding charges were dismissed with  
 6 prejudice. The proposed redactions—none of which are substantive, but merely obscure  
 7 the state investigation from which this case arose—will not deprive the public of the  
 8 Court's analysis in reaching its decisions.

9       The Defendant's argument seeking unsealing makes no mention of the ongoing  
 10 state homicide investigation and the public's corresponding interest in eliminating or  
 11 significantly reducing the risk of disclosing information that may compromise law  
 12 enforcement efforts. This omission, paired with rejection of the government's proposed  
 13 alternative of publishing redacted versions of the Orders, is telling.

14       The Defendant notes that limited references to the state investigation were  
 15 introduced by both parties in filed pleadings and during court proceedings. In most of  
 16 those instances, the references were inadvertent. Regardless of the scope, number, and  
 17 context, there is no authority supporting this waiver theory advanced by the Defendant.  
 18 The government undertook extensive efforts to limit public access to any information that  
 19 would compromise the state investigation, generally without any objection from the  
 20 defendant. As the Court is aware, attempts were made to anonymize references to  
 21 individuals and groups believed to be associated with the homicide investigation. The  
 22 overwhelming majority of substantive pleadings related to these two issues were filed  
 23 under seal. Extensive protective orders were entered restricting access to discovery. Each  
 24 of these steps were undertaken for the recognized purpose of protecting an open  
 25 investigation. That purpose remains valid today. It has not been waived.

26       To be clear, the limited redactions sought by the government on behalf of King  
 27 County are not being requested to diminish embarrassment, avoid recriminations, or  
 28 minimize exposure to further litigation. They are sought for the singular purpose of

1 preserving the integrity of an open homicide investigation. *See* Declarations of Senior  
 2 Deputy Prosecuting Attorney Scott O'Toole and King County Sheriff's Office Detective  
 3 John Free, attached as Exhibits C (O'Toole) and D (Free). Through the law enforcement  
 4 efforts of county detectives and prosecutors, the public interest in identifying and  
 5 prosecuting those responsible for the homicide is being advanced. Ex. C, at ¶ 9; Ex. D,  
 6 at ¶ 7. Any step that could undermine these efforts should be denied, particularly when it  
 7 serves no purpose.

8 In summary, the Defendant achieved his objective. The federal prosecution has  
 9 been dismissed. Publication of the proposed redacted Orders does nothing to undermine  
 10 this result. The minimal redactions do not deprive the public of the opportunity to access  
 11 this Court's analysis. They do preserve the public's compelling interest in protecting  
 12 public safety by reducing risks associated with disclosure of law enforcement sensitive  
 13 information. The government respectfully requests that Defendant's motion to unseal the  
 14 two Orders in their entirety be denied and that the redacted versions be substituted and  
 15 entered on the public docket.

16 DATED this 16<sup>th</sup> day of September, 2021.  
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18 Respectfully submitted:  
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